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SUBJECT: HOUSE ARREST FOR SECURITY CERTIFICATE DETAINEES

Sensitive But Unclassified - protect accordingly.

¶11. (SBU) SUMMARY: As a result of Canada's Supreme Court having struck down Canada's security certificate program on February 23, two men who are currently alleged to be security threats have been or will be released from custody and join other released detainees on house arrest. These men will be closely monitored but out of custody as the GOC struggles to revise a security certificate system that was used 28 times since 1978 to deal with particularly dangerous foreigners in Canada. The future of the security certificate system will be a matter of continuing interest as Canada seeks to balance security, and the protection of confidential information, with Charter rights. END SUMMARY

History of Security Certificates

¶12. (SBU) Security certificates in Canada have been used since 1978 to detain and/or deport non-Canadians deemed to be security threats. Created in 1978's Immigration and Refugee Protection Act, only 28 security certificates have been issued. All but six of these certificates were issued before 9/11.

¶13. (SBU) The security certificates had to be signed by the Minister of Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness, after which they had to be endorsed by a federal court judge. The application for a certificate caused the suspension of all immigration proceedings until the judge ruled on the certificate request in a closed-door hearing. Non-resident foreign nationals subject to a certificate would be automatically detained, and permanent resident foreign nationals could be detained on a case-by-case basis. If the federal court ruled that the certificate was reasonable, the person would be ordered deported; however, should the subjects of approved security certificates refuse to leave Canada, they frequently faced long-term detention until their cases were resolved. If the court found that the certificate was unreasonable, it was quashed and the person was released. Detainees had no right to hear the evidence against them, but received a summary of the allegations.

¶14. (SBU) On February 23 Canada's Supreme Court unanimously struck down the security certificate system, ruling that it violated Canada's Charter of Rights and Freedoms. Specifically, the Court said, the security certificate system violated section 7 of the Charter, which guarantees that the state will respect principles of fundamental justice when it restricts a person's liberty or security. The court said that the detainees were entitled to know the case against them, to have the chance to answer allegations, and to have a fair hearing before an impartial judge. However, the court recognized the need to protect confidential information, and recommended a system like Great Britain's in which "special counsel" is appointed to represent detainee rights. The Court gave Parliament one year to write a new law, after which all current detainees' certificates would expire and they would be free to go.

¶15. (SBU) Even before the security certificate system was struck

down, Canadian courts were releasing detainees from custody into house arrest. Media reports on the security certificates have focused on five men--the so-called "Secret Trial Five." Of the five, three have already been released, while a fourth will be released soon.

The Detainees

¶6. (SBU) Adil Charkaoui is a 33 year old native of Morocco. A former university student, karate instructor, and pizzeria worker, Charkaoui was arrested in 2005 in Montreal, accused of membership in the Moroccan Islamic Combatant Group. Authorities claim that Ahmed Ressam, the would-be Millennium Bomber arrested in 1999 entering Washington State from British Columbia, recognized Charkaoui from an al-Qaeda training camp in Afghanistan. Charkaoui was released from custody in 2005 and is under house arrest in Montreal.

¶7. (SBU) Mohamed Harkat is a 37 year old native of Algeria. The former pizza delivery man has acknowledged that he once belonged to the Islamic Salvation Front (ISF) in Algeria, an organization that Algeria has subsequently outlawed. Authorities also accuse Harkat of supporting the Armed Islamic Group, a violent offshoot of the ISF. Authorities further accuse Harkat of being an al-Qaeda sleeper agent and the former operator of a safe house in Pakistan for extremists traveling to Chechnya. Harkat was released from custody in 2006; he remains under house arrest in Ottawa.

¶8. (SBU) Hassan Almrei is a 32 year old native of Syria. Authorities accuse Almrei of attending al-Qaeda camps in Pakistan and Afghanistan and supporting Islamic extremists in Tajikistan. Almrei is still in custody, and there are no public plans to release him.

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¶9. (SBU) Mahmoud Jaballah is a 44 year old native of Egypt. Jaballah is the former principal of a Toronto Islamic School. Authorities accuse him of membership in Egyptian Islamic Jihad. He admits that he casually knew Ahmed Saeed Khadr, a Canadian citizen and Osama bin Ladin lieutenant. Jaballah was arrested in 1999 on a security certificate, but was released when that certificate was quashed. He was re-arrested in 2001 on another certificate. Jaballah will be released on bail soon and is expected to live in Scarborough, a Toronto suburb. A Canadian judge has ruled that Jaballah cannot be deported to Egypt because he allegedly faces the threat of torture there.

¶10. (SBU) Mohammad Mahjoub is a 46 year old native of Egypt. Authorities accuse Mahjoub of belonging to Vanguard of Conquest, an Egyptian group linked to al-Qaeda. Mahjoub admits that he worked in Sudan on a farm owned by bin Ladin. He also admits that he knows Ahmed Saad Khadr. He was arrested in 2000, but was released on bail in February 2007. He currently is under house arrest at his home in Toronto. A Canadian judge has ruled that Ottawa must review Mahjoub's risk of being tortured if he were to be deported to Egypt.

¶11. (SBU) In addition to the "Secret Trial Five," a sixth detainee is being held on charges unrelated to al-Qaeda. Manickavasagam Suresh is a 55 year old native of Sri Lanka. He was arrested in 1995 on allegations he was raising funds for the Tamil Tigers. Suresh has been released on bail and lives in the Toronto area.

House Arrest

¶12. (SBU) Harkat and Charkaoui were released to house arrest by lower courts after challenging their detention. Mahjoub was released and placed on house arrest after the Supreme Court's February decision. The terms of their house arrest include restrictions regarding with whom they can associate, monitoring of their phone calls, and limitations on when they can leave home. They must also clear all their visitors with the Canada Border Services Agency and not use the Internet. They are reportedly tailed by police when they leave the house. According to media

reports, Harkat complains that the terms of his house arrest are making it difficult for him to visit with friends and relatives and go to doctor's appointments.

¶13. (SBU) COMMENT: Canada's security certificate system was a rarely-used but potentially valuable tool Canadian federal law enforcement officials could employ to combat security threats. Canada must now weigh security and the protection of confidential information against Charter rights as it contemplates rewriting the security certificate law. END COMMENT

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